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No. 1019

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1946.

PEOPLE OF STATE OF ILLINOIS, ex rel, ADA BELL EL, for and on behalf of IRA JOHNSON BEY,
Petitioner,

vs.

WALTER NIERSTHEIMER, Warden Menard Psychiatric Division, Illinois State Penitentiary, Menard, Illinois,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES, AND BRIEF AND ARGUMENT IN SUPPORT THEREOF.

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To the Honorable Fred M. Vinson, Chief Justice, and Associate Justices of the Supreme Court of the United States:

The petitioner, Ada Bell El, for and on behalf of Ira Johnson Bey, respectfully represents to this Honorable Court the following:

Brief Summary, Statement of the Matter Involved.

I.

The petitioner, Ada Bell El, for and on behalf of Ira Johnson Bey, says that Ira Johnson Bey was indicted by the Grand Jury of Cook County, Illinois, for the crime of murder, and on the eighteenth day of April A. D. 1930, said Ira Johnson Bey, upon a plea of guilty, was tried before the Honorable Walter P. Steffen, Ex-officio Judge of the Criminal Court of Cook County, and was thereupon sentenced to imprisonment in the Illinois State Penitentiary at Joliet, Illinois, for the period of his natural life (Rec. 2).

Said defendant was received in the penitentiary at Joliet on April 23, 1930, and under date of January 20, 1931, he was transferred to the Chester State Hospital, Menard, Illinois, and under date of April 1, 1935, he was again transferred to the Menard Psychiatric Division of the Illinois penal system (Rec. 13).

II.

As is alleged in his petition, at the time of the transfer of petitioner to the Chester State Hospital, he was classified as suffering from dementia praecox, said Chester State Hospital being an inmate for the confinement of insane persons, and on the first day of April, 1935, the said Ira Johnson Bey was again transferred to the Menard Psychiatric Division of the penal system (Rec. 2) where he is now confined.

III.

It is the contention of petitioner that the petitioner having been sentenced to the Illinois State Penitentiary for the crime of murder, the several transfers of petitioner from said Illinois State Penitentiary to the Chester State Hospital for the Criminal Insane and thereafter to the Menard Phychiatric Division of the penal system, without first having had an adjudication of the subject matter by a court of competent jurisdiction, he has been and is being deprived of his liberty without due process of law.

Jurisdiction.

A.

The Supreme Court of Illinois rendered its final decision denying the application for a writ of habeas corpus on the first day of November, A. D. 1946.

B.

Petitioner respectfully prays the intervention of this Honorable Supreme Court of the United States under the Fifth Amendment of the Constitution of the United States, Amendment One of the United States, as well as the Fourteenth Amendment of the Constitution of the United States.

POINTS AND AUTHORITIES.

Petitioner having been sentenced to the Illinois State Penitentiary for a crime, he could not lawfully be transferred to the Chester State Hospital for Criminal Insane, and thereafter to the Menard Psychiatric Division of the penal system, as an alleged insane person, thereby permitting him to associate with and mingle with insane persons, without having first been adjudged a lunatic by some court of competent jurisdiction. An act or statute conferring such authority upon a ministerial officer is void:

The People v. *Mallory,* 195 Ill. 582;

The People v. *Montana,* 380 Ill. on pp. 608-609;

Reid v. *Smith,* 375 Ill. on p. 152;

The People ex rel. Kern, State's Attorney, v. *Samuel B. Chase,* 165 Ill. 527.

ARGUMENT.

I.

From the record herewith submitted, it appears that the petitioner was first sentenced to life imprisonment in the Illinois State Penitentiary at Joliet, Illinois. Such a sentence automatically gives a prisoner the right to a parole at the end of twenty years, so as to permit him to again be restored to his liberty and to associate with his family and friends.

A transfer of a prisoner from the penitentiary to an insane hospital for criminal insane permits the prisoner to mingle and associate with absolute crazy people of various types and degrees. Continued contact with such persons might and often does increase the malady with which one might be suffering, so that there never could be any hope for the prisoner's recovery. Hence the law provides that only a court of competent jurisdiction should have the power and authority to make such transfer *and only by virtue of an adjudication by the court of the prisoner's mental condition.* It is respectfully contended by the undersigned that this procedure is jurisdictional and mandatory. In the instant case it appears that a ministerial officer or officers performed the judicial function, and it is further contended by us that such a procedure violates the prisoner's constitutional rights under the Fourteenth Amendment to the Constitution. of the United States.

A case in point where the transfer from one institution to another was made by the Board of Managers—minis-

terial officers—without a court order authorizing such transfer is the case of *The People of Illinois* v. *Mallory*, 195 Ill. 582, where the court on page 590 said:

"It is contended on behalf of respondent that the transfer of the relators to the penitentiary because they were incorrigible and their presence in the reformitory appeared to be seriously detrimental to the well-being of the institution was merely an act of necessary discipline which the board had power to exercise in the management of the reformatory. We cannot so conclude. By the transfer to the penitentiary they surrendered all control and power of discipline over the prisoners placed in their control to another and independent administrative board or authority, which by the judgment and process of the court, had no right of custody or control over such prisoners, and to whose custody and control the court which had all the judicial power there was in the matter, had no power to commit such prisoners. There are material distinctions, under the laws of this State, between the penitentiary and the State Reformatory. In the case cited (148 Ill. 413), we said:

" 'That in the enactment of this law it was the humane and benign intention of the General Assembly to afford a means for the reformation of youthful criminals is manifest from the fact that the institution is devoted solely to the reception of minors between the ages of ten and twenty-one years.'

"And again, at page 423:

" 'There is in the law of nature, as well as in the law that governs society, a marked distinction between persons of mature age and those who are minors. The habits and characters of the latter are, presumably, to a large extent as yet unformed and unsettled. The distinction may be well taken into consideration by the legislative power in fixing the punishment for crime, both in determining the method of inflicting punishment and in limiting its quantity and duration. An adult convicted of bur-

glary would be sentenced to the penitentiary and to either solitary confinement or hard labor therein, and the statutes which consign him to such punishment must be regarded as highly penal. A minor, however, instead of being sentenced to solitary confinement or hard labor in a penitentiary is committed to the State Reformatory. The general scope and humane and benign purpose of the statute establishing the reformatory are clearly indicated in the Act. * * * It is manifest that the sentences provided for in the statute establishing the reformastory, although to be regarded a puishment for crime, are not of so purely a penal character as those imposed upon adults convicted of like offenses, but that the primary object of the statute is the reformation and amendment of those committed to the reformatory.'

* * *

"It seems clear that there is a material difference in the grades of punishment provided for in the two institutions. The penitentiary is a State prison, but while those sentenced to imprisonment in the reformatory are imprisoned in a State institution, still the object, purpose and management of the institution are so different from those of a penitentiary or a mere prison that the reformatory cannot properly be designated as a State prison, as that term is usually understood and used. It follows, as we think, that a sentence to the penitentiary, involving as it does, infamous punishment, is a severer grade or degree of punishment than a sentence to the reformatory, and involves consequences to the convict of a much more serious character.

"The question then is, has the General Assembly the power to authorize the board of managers of the reformatory—a mere executive or administrative board —to send to the penitentiary persons committed to their custody in such reformatory for a breach of descipline prescribed by such board for the government of the institution, or because the presence of such persons is

detrimental to the well-being of such institution? We are of the opinion that such power is denied to the General Assembly by more than one provision of the Constitution. The power so attempted to be conferred is judicial, and not executive or administrative. It is not merely disciplinary, and it can only be exercised by a court vested with judicial power by the Constitution. It must be observed that such transfer is not within the judgment and sentence of the court, and the act of the board is not simply a determination of the condition or circumstances under which the prisoner may be committed to the penitentiary, but it is outside of and beyond such judicial determination, and is the exercise of a judicial power which the legislature has even withheld from the courts. Doubtless legislation might be so framed as to make the order of transfer by the board a mere determinastion of the conditions on which, in executing the judgment of the court, the prisoner could lawfully be transferred from the reformatory to the penitentiary, but Section 15, as before said, cannot be so construed.

"In the administration of the criminal laws of the State there is no power outside of the court to authorize the punishment of persons for crime by confinement in the penitentiary, and the Constitution expressly inhibits any person or collection of persons of one department of government from exercising any power properly belonging to either of the others, except as expressly permitted by the Constitution, and is cannot, of course, be claimed that this case falls within any such exception. Nor can it be said that the relators were so transferred and imprisoned in the penitentiary in accordance with the law of the land or by due process of law. The transfer was made by the board, as we have seen, without any lawful authority, and it was made without any hearing and without trial, but by a mere resolution passed and entered upon its records. * * * The statute purports to confer power upon the board to determine, from its own source of information, to its satisfaction, that the prisoner was

more than twenty-one years of age when he was convicted or that he had previously been convicted of crime, and upon such determination without regard to the judgment of the court, to transfer the prisoner to the penitentiary. But the statute makes it the duty of the courts to adjudicate upon and determine those questions, and their final judgments cannot be made subject to review or reversal by an administrative board having no judicial power."

So in the instant case, our statutes provide for a judicial inquiry as to whether a citizen or even an alien has become mentally unbalanced, and it was the absolute and imperative duty of the officers having petitioner in charge to have had petitioner brought before the court and the question whether he was sane or insane since his commitment to the penitentiary passed upon and adjudicated, and thereupon the defendant and officers having petitioner under his or their control could have transferred petitioner to an insane hospital.

Were this not so, take for instance, the case of A, of whose sanity there could be no question, the warden or board could arbitrarily transfer him to the Chester Hospital for the Criminal Insane, and eventually A would become insane. But under our system of criminal jurisprudence, such arbitrary power does not reside in any non-judicial officer, without first having had a judicial inquiry.

Such a method of procedure deprives a citizen of his liberty without due process of law, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States. And finally we must respectfully submit and urge upon this august Tribunal that until one

is declared insane by a court of competent jurisdiction, the authorities holding the petitioner in confinement under criminal process had no legal right to transfer him to an insane asylum and that such transfer was a deprivation of petitioner's rights under the Federal Constitution.

Respectfully submitted,

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